UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
DWIVEDI, MAHESH H

ART UNIT	PAPER NUMBER
2168	

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/708,940	BANDE ET AL.
	Examiner	Art Unit	
	Mahesh H. Dwivedi	2168	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>10/16/2006</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,3-11,13-21 and 23-29</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1,3-11,13-21 and 23-29</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>01 April 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   Receipt of Applicant's Amendment, filed on 10/16/2006, is acknowledged. The

amendment includes the amending of claims 1, 3, 6, 8, 11, 13-16, 18-21, 23, 26, and

28, and the cancellation of claims 2, 12, and 22.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
>
> another filed in the United States before the invention by the applicant for patent or (2) a patent
>
> granted on an application for patent by another filed in the United States before the invention by the
>
> applicant for patent, except that an international application filed under the treaty defined in section
>
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
>
> only if the international application designated the United States and was published under Article 21(2)
>
> of such treaty in the English language.

3.   Claims 1, 4-6, 8-11, 14-16, 18-21, 24-26, and 28-29 are rejected under 35

U.S.C. 102(e) as being anticipated by **Ernst et al.** (U.S. PGPUB 2004/0103215).

4.   Regarding claims 1 and 11, **Ernst** teaches a method and computer readable

medium comprising:

A) determining whether to send said data in a compressed format (Paragraph 21,

Figure 4);

B) if it is determined to send said data in said compressed format, compressing said

data to generate compressed data using a compression approach and sending said

compressed data to said second end system on said network (Paragraph 21, Figure 4);

and

C) otherwise, sending said data in an uncompressed format to said second end system

on said network (Paragraph 21, Figure 4);

D) <u>wherein said determining checks a processing load on each of said first end system</u>

<u>and said second end system</u> (Paragraph 21, Figure 4); and

E) <u>determines not to send said data in said compressed format if the processing load</u>

<u>on either end system is determined to be more than a first threshold</u> (Paragraph 21,

Figure 4).

The examiner notes that **Ernst** teaches **"determining whether to send said**

data in a compressed format" as "When routine 315 receives web server 310's

response to browser 325's request for data (block 405), it determines whether the data

contained therein is eligible for compression (decision block 410)" (Paragraph 21). The

examiner further notes that **Ernst** teaches **"if it is determined to send said data in**

said compressed format, compressing said data to generate compressed data

using a compression approach and sending said compressed data to said

second end system on said network" as "After compressing the data, routine 315

may update a metadata store it uses to track what data objects its has compressed

(block 450) and then transmit the compressed data back to browser 325 (block 455)"

(Paragraph 21). The examiner further notes that **Ernst** teaches **"otherwise, sending**

said data in an uncompressed format to said second end system on said

network" as "If the data is not eligible for compression (the "NO" prong of decision

block 410), the data received from the web server 310 during the acts of block 405 is

passed or relayed to browser 325 without further processing (block 415)" (Paragraph

21). The examiner further notes that **Ernst** teaches "**wherein said determining**

checks a processing load on each of said first end system and said second end

system" as "routine 315 in accordance with one embodiment of the invention begins by

determining certain client 320/browser 325 information (block 400). For example,

routine 315 may determine the approximate data transfer rate between browser 325

and web server 210 during set-up operations. In addition, routine 315 may ascertain if

browser 325 supports decompression utilities" (Paragraph 21) and "a further check is

made to determine if the central processor unit executing routine 315 and/or designated

to compress data for routine 315 is below a specified utilization (decision block 430).

The check of block 430 may be performed to ensure that server 305 (or a functional unit

associated with server 305) is not tasked to perform a computationally intensive job (the

act of compressing data) if it is already heavily utilized for other tasks" (Paragraph 21).

The examiner further notes that **Ernst** teaches "**determines not to send said data in**

said compressed format if the processing load on either end system is

determined to be more than a first threshold" as "a utilization threshold may be set

at specified percentage of the processor's total capacity. In some embodiments, this

threshold may be set at the user's discretion anywhere from 0% to 100%. For example

85%. If routine 315's processor's utilization is at or above the specified threshold (the

"YES" prong of decision block 430), data received from web server 310 during the acts

of block 405 is passed or relayed to browser 325 with further processing (block 415)"

(Paragraph 21).

Regarding claims 4 and 14, **Ernst** further teaches a method and computer

readable medium comprising:

A) wherein said determining checks a type of said data (Paragraphs 21 and 23, Figure

4); and

B) determines not to send said data in said compressed format if said type does not

lend to substantial data compression (Paragraphs 21 and 23, Figure 4).

The examiner notes that **Ernst** teaches **"wherein said determining checks a**

type of said data" as "By way of example, data less than a specified size, or data

already in a compressed format, or of a specified file type...may be designated "not

eligible". If the data is not eligible for compression (the "NO" prong of decision block

410), the data received from the web server 310 during the acts of block 405 is passed

or relayed to browser 325 without further processing (block 415)" (Paragraph 21). The

examiner further notes that **Ernst** teaches **"determines not to send said data in said**

compressed format if said type does not lend to substantial data compression"

as "By way of example, data less than a specified size, or data already in a compressed

format, or of a specified file type...may be designated "not eligible". If the data is not

eligible for compression (the "NO" prong of decision block 410), the data received from

the web server 310 during the acts of block 405 is passed or relayed to browser 325 without further processing (block 415)" (Paragraph 21).

Regarding claims 5 and 15, **Ernst** further teaches a method and computer readable medium comprising:

A) wherein said determining examines a size of said data (Paragraph 21, Figure 4); and

B) determines not to send said data in said compressed format if said size is small (Paragraph 21, Figure 4).

The examiner notes that **Ernst** teaches **"wherein said determining examines a size of said data"** as "By way of example, data less than a specified size, or data already in a compressed format, or of a specified file type...may be designated "not eligible". If the data is not eligible for compression (the "NO" prong of decision block 410), the data received from the web server 310 during the acts of block 405 is passed or relayed to browser 325 without further processing (block 415)" (Paragraph 21). The examiner further notes that **Ernst** teaches **"determines not to send said data in said compressed format if said size is small"** as "By way of example, data less than a specified size, or data already in a compressed format, or of a specified file type...may be designated "not eligible". If the data is not eligible for compression (the "NO" prong of decision block 410), the data received from the web server 310 during the acts of block 405 is passed or relayed to browser 325 without further processing (block 415)" (Paragraph 21).

Regarding claims 6 and 16, **Ernst** further teaches a method and computer readable medium comprising:

A) wherein said determining <u>further</u> checks a speed of data transfer on said network (Paragraph 21, Figure 4); and

B) determines not to use said compressed format if said speed is high (Paragraph 21, Figure 4).

The examiner notes that **Ernst** teaches **"wherein said determining <u>further</u> checks a speed of data transfer on said network"** as "based on the determined transmission rate between web server 310 and browser 325 (in accordance with the acts of block 400) and the amount of time it takes to compress the data object, routine 315 can determine if the rime it takes to compress the data object provides an acceptable speed-up in transmission (block 440)" (Paragraph 21). The examiner further notes that **Ernst** teaches **"determines not to use said compressed format if said speed is high"** as "In one embodiment, if the time saved in transmitting the compressed data does not save more time (at the determined transmission rate between web server 310 and browser 325) than it takes to compress the data (the "NO" prong in decision block 440), the data received from web server 310 during the acts of block 405 is passed or relayed to browser 325 without further processing (block 415)" (Paragraph 21).

Regarding claims 8 and 18, **Ernst** further teaches a method and computer

readable medium comprising:

A) <u>wherein said determining further checks a speed of data transfer on said network</u>

<u>and determines not to use said compressed format is said speed is high</u>;

B) wherein said speed is determined by including a first local time stamp in a packet

sent to said second end system, and receiving a second time stamp and a third time

stamp from said second end system at a time specified by a fourth local time stamp,

wherein said second time stamp indicates a time at which said packet is received in

said second end system and said third time stamp indicates a time at which said packet

is <u>sent</u> from said second end system, wherein said speed is determined based on said

first local time stamp, said second time stamp, said third time stamp, and said fourth

time stamp (Paragraphs 21 and 25, Figure 9).

The examiner notes that **Ernst** teaches "**<u>wherein said determining further</u>**

<u>checks a speed of data transfer on said network and determines not to use said</u>

<u>compressed format is said speed is high</u>" as "In one embodiment, if the time saved

in transmitting the compressed data does not save more time (at the determined

transmission rate between web server 310 and browser 325) than it takes to compress

the data (the "NO" prong in decision block 440), the data received from web server 310

during the acts of block 405 is passed or relayed to browser 325 without further

processing (block 415)" (Paragraph 21). The examiner further notes that **Ernst** teaches

"**wherein said speed is determined by including a first local time stamp in a**

packet sent to said second end system, and receiving a second time stamp and a

third time stamp from said second end system at a time specified by a fourth

local time stamp, wherein said second time stamp indicates a time at which said

packet is received in said second end system and said third time stamp indicates

a time at which said packet is <u>sent</u> from said second end system, wherein said

speed is determined based on said first local time stamp, said second time

stamp, said third time stamp, and said fourth time stamp" as "Next, the time

needed to transmit the compressed data object based on the transmission rate

calculated in accordance with block 400 of FIG. 4 and recorded in connection database

700 is determined (block 905). A similar calculation is performed to determine the time

needed to transmit the uncompressed data object (block 910)" (Paragraph 25).

Regarding claims 9 and 19, **Ernst** further teaches a method and computer

readable medium comprising:

A) wherein said first end system comprises one of a database server and a database

client (Paragraph 20, Figure 3); and

B) said second end system comprises the other one of said database server and said

database client (Paragraph 20, Figure 3).

The examiner notes that **Ernst** teaches "**wherein said first end system**

comprises one of a database server and a database client" as "system 300 in

accordance with one embodiment of the invention comprises server computer system

305 on which web server application 310 and selective compression routine 315

execute" (Paragraph 20). The examiner further notes that **Ernst** teaches "**said second**

end system comprises the other one of said database server and said database client" as "routine 315 is logically positioned between web server application 310 and client computer system 320" (Paragraph 20).

Regarding claims 10 and 20, **Ernst** further teaches a method and computer readable medium comprising:

A) wherein said data comprises software instructions (Paragraph 28).

The examiner notes that **Ernst** teaches "**wherein said data comprises software instructions**" as "In addition, acts in accordance with FIGS. 4, 5, 6, 8, and 9 may be performed by a programmable control device executing instructions organized into a program module (e.g. routine 315)" (Paragraph 28).

Regarding claim 21, **Ernst** teaches an apparatus comprising:

A) means for determining whether to send said data in a compressed format (Paragraph 21, Figure 4);

B) means for compressing said data to generate compressed data using a compression approach and means for sending said compressed data to said second end system on said network if it is determined to send said data in said compressed format (Paragraph 21, Figure 4); and

C) means for sending said data in an uncompressed format to said second end system on said network otherwise (Paragraph 21, Figure 4);

D) wherein said means for determining checks a processing load on each of said first

end system and said second end system (Paragraph 21, Figure 4); and

E) determines not to send said data in said compressed format if the processing load

on either end system is determined to be more than a third threshold (Paragraph 21,

Figure 4).

The examiner notes that **Ernst** teaches **"means for determining whether to**

send said data in a compressed format" as "When routine 315 receives web server

310's response to browser 325's request for data (block 405), it determines whether the

data contained therein is eligible for compression (decision block 410)" (Paragraph 21).

The examiner further notes that **Ernst** teaches **"means for compressing said data to**

generate compressed data using a compression approach and means for sending

said compressed data to said second end system on said network if it is

determined to send said data in said compressed format" as "After compressing

the data, routine 315 may update a metadata store it uses to track what data objects its

has compressed (block 450) and then transmit the compressed data back to browser

325 (block 455)" (Paragraph 21). The examiner further notes that **Ernst** teaches

"means for sending said data in an uncompressed format to said second end

system on said network otherwise" as "If the data is not eligible for compression (the

"NO" prong of decision block 410), the data received from the web server 310 during the

acts of block 405 is passed or relayed to browser 325 without further processing (block

415)" (Paragraph 21). The examiner further notes that **Ernst** teaches **"wherein said**

means for determining checks a processing load on each of said first end system

and said second end system" as "routine 315 in accordance with one embodiment of

the invention begins by determining certain client 320/browser 325 information (block

400). For example, routine 315 may determine the approximate data transfer rate

between browser 325 and web server 210 during set-up operations. In addition, routine

315 may ascertain if browser 325 supports decompression utilities" (Paragraph 21) and

"a further check is made to determine if the central processor unit executing routine 315

and/or designated to compress data for routine 315 is below a specified utilization

(decision block 430). The check of block 430 may be performed to ensure that server

305 (or a functional unit associated with server 305) is not tasked to perform a

computationally intensive job (the act of compressing data) if it is already heavily utilized

for other tasks" (Paragraph 21). The examiner further notes that **Ernst** teaches

"determines not to send said data in said compressed format if the processing

load on either end system is determined to be more than a third threshold" as "a

utilization threshold may be set at specified percentage of the processor's total capacity.

In some embodiments, this threshold may be set at the user's discretion anywhere from

0% to 100%. For example 85%. If routine 315's processor's utilization is at or above

the specified threshold (the "YES" prong of decision block 430), data received from web

server 310 during the acts of block 405 is passed or relayed to browser 325 with further

processing (block 415)" (Paragraph 21).

Regarding claim 24, **Ernst** further teaches an apparatus comprising:

A) wherein said means for determining checks a type of said data (Paragraphs 21 and

23, Figure 4); and

B) determines not to send said data in said compressed format if said type does not

lend to substantial data compression (Paragraphs 21 and 23, Figure 4).

The examiner notes that **Ernst** teaches **"wherein said means for determining**

checks a type of said data" as "By way of example, data less than a specified size, or

data already in a compressed format, or of a specified file type…may be designated

"not eligible". If the data is not eligible for compression (the "NO" prong of decision

block 410), the data received from the web server 310 during the acts of block 405 is

passed or relayed to browser 325 without further processing (block 415)" (Paragraph

21). The examiner further notes that **Ernst** teaches **"determines not to send said**

data in said compressed format if said type does not lend to substantial data

compression" as "By way of example, data less than a specified size, or data already

in a compressed format, or of a specified file type…may be designated "not eligible". If

the data is not eligible for compression (the "NO" prong of decision block 410), the data

received from the web server 310 during the acts of block 405 is passed or relayed to

browser 325 without further processing (block 415)" (Paragraph 21).

Regarding claim 25, **Ernst** further teaches an apparatus comprising:

A) wherein said means for determining examines a size of said data (Paragraph 21,

Figure 4); and

B) determines not to send said data in said compressed format if said size is small

(Paragraph 21, Figure 4).

The examiner notes that **Ernst** teaches **"wherein said means for determining**

examines a size of said data" as "By way of example, data less than a specified size,

or data already in a compressed format, or of a specified file type...may be designated

"not eligible". If the data is not eligible for compression (the "NO" prong of decision

block 410), the data received from the web server 310 during the acts of block 405 is

passed or relayed to browser 325 without further processing (block 415)" (Paragraph

21). The examiner further notes that **Ernst** teaches **"determines not to send said**

data in said compressed format if said size is small" as "By way of example, data

less than a specified size, or data already in a compressed format, or of a specified file

type...may be designated "not eligible". If the data is not eligible for compression (the

"NO" prong of decision block 410), the data received from the web server 310 during the

acts of block 405 is passed or relayed to browser 325 without further processing (block

415)" (Paragraph 21).

Regarding claim 26, **Ernst** further teaches an apparatus comprising:

A) wherein said means for determining <u>further</u> checks a speed of data transfer on said

network (Paragraph 21, Figure 4); and

B) determines not to use said compressed format if said speed is high (Paragraph 21,

Figure 4).

The examiner notes that **Ernst** teaches **"wherein said means for determining**

further **checks a speed of data transfer on said network"** as "based on the

determined transmission rate between web server 310 and browser 325 (in accordance

with the acts of block 400) and the amount of time it takes to compress the data object,

routine 315 can determine if the rime it takes to compress the data object provides an

acceptable speed-up in transmission (block 440)" (Paragraph 21). The examiner further

notes that **Ernst** teaches **"determines not to use said compressed format if said**

speed is high" as "In one embodiment, if the time saved in transmitting the

compressed data does not save more time (at the determined transmission rate

between web server 310 and browser 325) than it takes to compress the data (the "NO"

prong in decision block 440), the data received from web server 310 during the acts of

block 405 is passed or relayed to browser 325 without further processing (block 415)"

(Paragraph 21).

Regarding claim 28, **Ernst** further teaches a apparatus comprising:

A) wherein said means for determining further checks a speed of data transfer on said

network and determines not to use said compressed format is said speed is high;

B) wherein said means for determining includes a first local time stamp in a packet sent

to said second end system, and receives a second time stamp and a third time stamp

from said second end system at a time specified by a fourth local time stamp, wherein

said second time stamp indicates a time at which said packet is received in said second

end system and said third time stamp indicates a time at which said packet is send from

said second end system, wherein said speed is determined based on said first local

time stamp, said second time stamp, said third time stamp, and said fourth time stamp

(Paragraphs 21 and 25, Figure 9).

The examiner notes that **Ernst** teaches "<u>**wherein said determining further**</u>

<u>**checks a speed of data transfer on said network and determines not to use said**</u>

<u>**compressed format is said speed is high**</u>" as "In one embodiment, if the time saved

in transmitting the compressed data does not save more time (at the determined

transmission rate between web server 310 and browser 325) than it takes to compress

the data (the "NO" prong in decision block 440), the data received from web server 310

during the acts of block 405 is passed or relayed to browser 325 without further

processing (block 415)" (Paragraph 21). The examiner further notes that **Ernst** teaches

"**wherein said means for determining includes a first local time stamp in a packet**

sent to said second end system, and receives a second time stamp and a third

time stamp from said second end system at a time specified by a fourth local time

stamp, wherein said second time stamp indicates a time at which said packet is

received in said second end system and said third time stamp indicates a time at

which said packet is send from said second end system, wherein said speed is

determined based on said first local time stamp, said second time stamp, said

third time stamp, and said fourth time stamp" as "Next, the time needed to transmit

the compressed data object based on the transmission rate calculated in accordance

with block 400 of FIG. 4 and recorded in connection database 700 is determined (block

905). A similar calculation is performed to determine the time needed to transmit the uncompressed data object (block 910)" (Paragraph 25).

Regarding claim 29, **Ernst** further teaches an apparatus comprising:

A) wherein said first end system comprises one of a database server and a database client (Paragraph 20, Figure 3); and

B) said second end system comprises the other one of said database server and said database client (Paragraph 20, Figure 3).

The examiner notes that **Ernst** teaches **"wherein said first end system comprises one of a database server and a database client"** as "system 300 in accordance with one embodiment of the invention comprises server computer system 305 on which web server application 310 and selective compression routine 315 execute" (Paragraph 20). The examiner further notes that **Ernst** teaches **"said second end system comprises the other one of said database server and said database client"** as "routine 315 is logically positioned between web server application 310 and client computer system 320" (Paragraph 20).

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6.   Claims 3, 13, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ernst et al.** (U.S. PGPUB 2004/0103215 as applied to claims 1, 4-6, 8-11, 14-16, 18-21, 24-26, and 28-29 and in view of **Shah et al.** (U.S. Patent 7,043,524).

7.   Regarding claims 3, 13, and 23, **Ernst** does not explicitly teach a method, computer readable medium, and apparatus comprising:

A) wherein said processing load is checked periodically.

Shah, however, teaches **"wherein said processing load is checked periodically"** as "The Monitor Server 108—It monitors the load in terms of percent of CPU utilization on the Application Servers 107 and the License Servers 106 on a periodic basis (for example—every minute)" (Column 9, lines 27-31).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to combine the teachings of the cited references because teaching

Shah's would have allowed **Ernst's** to allow for an automated method to give client

systems a reduced load for streaming data via requests to corresponding servers, as

noted by **Shah** (Column 2, lines 29-34).

8.   Claims 7, 17, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable

over **Ernst et al.** (U.S. PGPUB 2004/0103215 as applied to claims 1, 4-6, 8-11, 14-16,

18-21, 24-26, and 28-29 and in view of **Somekh et al.** (U.S. PGPUB 2003/0123466).

9.   Regarding claims 7 and 17, **Ernst** does not explicitly teach a method and

computer readable medium comprising:

A) wherein said speed is determined by sending an ICMP echo packet.

Somekh, however, teaches **"wherein said speed is determined by sending

an ICMP echo packet"** as "Optionally, the round trip delay of packets on the network

38 included in the current MoIP connection 30, is measured by transmitting an echo

request packet (e.g., an ICMP echo request) from one of the gateways 36 to the other

and measuring the time between transmitting the echo request and receiving the

response thereto, from the other gateway" (Paragraph 201).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to combine the teachings of the cited references because teaching

Somekh's would have allowed **Ernst's** to provide a method to allow for calculating

utilization speeds for potential transfers of data.

Regarding claim 27, **Ernst** does not explicitly teach an apparatus comprising:

A) wherein said means for determining determines said speed by sending an ICMP

echo packet.

Somekh, however, teaches **"wherein said means for determining determines**

said speed by sending an ICMP echo packet" as "Optionally, the round trip delay of

packets on the network 38 included in the current MoIP connection 30, is measured by

transmitting an echo request packet (e.g., an ICMP echo request) from one of the

gateways 36 to the other and measuring the time between transmitting the echo request

and receiving the response thereto, from the other gateway" (Paragraph 201).

It would have been obvious to one of ordinary skill in the art at the time the

invention was made to combine the teachings of the cited references because teaching

Somekh's would have allowed **Ernst's** to provide a method to allow the ability to give

more or less weight to preferred advertisers on an individual basis to ensure

dependable advertisements, as noted by **Somekh** (Paragraphs 116, 119).

Response to Arguments

10.   Applicant's arguments filed on 10/16/2006 have been fully considered but they

are not persuasive.

Applicant goes on to argue on page 08, that **"Thus, Ernst teaches using**

"server-side only" techniques, and is believed to not go as far as suggesting (the

claimed feature) that the "server-side only" techniques would check the

processing load on the client computer systems". However, the examiner wishes

to point to Paragraph 21 of **Ernst**, which states "routine 315 in accordance with one

embodiment of the invention begins by determining certain client 320/browser 325

information (block 400). For example, routine 315 may determine the approximate data

transfer rate between browser 325 and web server 210 during set-up operations. In

addition, routine 315 may ascertain if browser 325 supports decompression utilities"

(Paragraph 21) and "a further check is made to determine if the central processor unit

executing routine 315 and/or designated to compress data for routine 315 is below a

specified utilization (decision block 430). The check of block 430 may be performed to

ensure that server 305 (or a functional unit associated with server 305) is not tasked to

perform a computationally intensive job (the act of compressing data) if it is already

heavily utilized for other tasks" (Paragraph 21). The examiner further wishes to state

that **Ernst's** method clearly checks processing load of the client system (see

determining transfer rate).

Applicant goes on to argue on page 08, that **"Furthermore, Ernst appears to**

teach away from the feature of claim 1 in stating that the server-side only

techniques"...do not rely on or require the installation and operation of special

purpose software or hardware on a client computer system specifically designed

to operate with those routines". However, in response to applicant's argument that

the references fail to show certain features of applicant's invention, it is noted that the

features upon which applicant relies (i.e., **"do not require the installation and**

operation of special purpose software or hardware on a client computer system

specifically designed to operate with those routines") are not recited in the rejected

claim(s). Although the claims are interpreted in light of the specification, limitations from

the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993).

Applicant goes on to argue on page 09, that **"Ernst, thus, relies on a timer to**

determine the speed of data transfer. There does not appear to be any

suggestion (in Ernst) of including time stamps in data packets sent/received

between the browser an webserver, as recited by claim 8". However, the examiner

wishes to point to Paragraph 25 of **Ernst**, which states "Next, the time needed to

transmit the compressed data object based on the transmission rate calculated in

accordance with block 400 of FIG. 4 and recorded in connection database 700 is

determined (block 905). A similar calculation is performed to determine the time

needed to transmit the uncompressed data object (block 910)" (Paragraph 25). The

examiner further wishes to state that **Ernst's** method clearly determines the potential

time for compression and data transmission. The examiner further wishes to state that

one can broadly interpret **"time stamps"** as measuring the time for potential computer

operations.

Conclusion

11.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

U.S. PGPUB 2004/0205249 issued to **Berry** on 14 October 2004. The subject

matter disclosed therein is pertinent to that of claims 1-29 (e.g., determining whether to

compress data to a requesting client).

U.S. PGPUB 2005/0210151 issued to **Abdo et al.** on 22 September 2005. The

subject matter disclosed therein is pertinent to that of claims 1-29 (e.g., determining

whether to compress data to a requesting client).

U.S. PGPUB 2005/0268068 issued to **Ignatius et al.** on 01 December 2005.

The subject matter disclosed therein is pertinent to that of claims 1-29 (e.g., determining

whether to compress data to a requesting client).

U.S. PGPUB 2002/0184224 issued to **Haff et al.** on 05 December 2002. The

subject matter disclosed therein is pertinent to that of claims 1-29 (e.g., determining

whether to compress data to a requesting client).

12.   Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Contact Information

13.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Mahesh Dwivedi whose telephone number is (571) 272-

2731. The examiner can normally be reached on Monday to Friday 8:20 am – 4:40 pm.

         If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Tim Vo can be reached (571) 272-3642. The fax number for the

organization where this application or proceeding is assigned is (571) 273-8300.

         Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

                                                        Mahesh Dwivedi

                                                        Patent Examiner

                   TIM VO   Art Unit 2168
         SUPERVISORY PATENT EXAMINER
           TECHNOLOGY CENTER 2100

November 13, 2006

Leslie Wong LW

Primary Examiner